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September 4, 2003

VIA HAND DELIVERY

Hon. Deborah Taylor Tate, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re: *Petition for Arbitration of ITC^DeltaCom Communications, Inc. with  
BellSouth Telecommunications, Inc. Pursuant to the  
Telecommunications Act of 1996*  
Docket No. 03-00119

Dear Chairman Tate:

During the DeltaCom arbitration hearing on August 28, BellSouth's witness Kathy Blake was asked to collect some additional evidence and supply it contemporaneously with BellSouth's post-hearing brief. Specifically, BellSouth was asked if it could provide information about whether CLECs in Nashville offer wholesale local switching to other CLECs. BellSouth will endeavor to respond to this request.

BellSouth has attempted to collect precisely this same information in the context of Docket No. 02-00207, the local switching exemption docket. In that docket, BellSouth sought to take discovery from third parties (certain Tennessee CLECs) regarding whether those CLECs offer wholesale switching in Nashville. BellSouth sought to take this discovery in order to defend against and refute the assertion made by the petitioners that BellSouth was the only company offering wholesale local switching in Nashville. Some CLECs who received those discovery requests objected on the basis that, as non-parties, they were not obligated to respond to discovery and, further, that responding to the request could reveal competitively-sensitive information.

Initially, the CLECs (specifically XO) suggested that the parties in the docket could stipulate to the number of CLEC switches in Nashville based on reference to the LERG.<sup>1</sup> The parties, however, were unable to reach a mutually acceptable stipulation. As a result, the TRA decided to issue a Data Request to collect the information. Over BellSouth's objection, it was determined that the CLEC responses to those requests would be filed with the Authority under seal, that the staff would compile all of the

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<sup>1</sup> BellSouth proposed, in October 2002, to stipulate that, according to the LERG, CLECs have at least 18 switches in Nashville, including 5ESS and DMS500 switches.

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responses and that the staff would remove any carrier-identifying information. While the CLECs have submitted their proprietary, sealed responses, BellSouth has not yet received the collective response compiled by the staff with the carrier-specific information deleted.

As indicated by the foregoing description, BellSouth's past efforts to collect information about the availability of CLEC-offered wholesale switching has been met with some obstacles. Specifically, CLECs are reluctant to share information regarding the location and capacity of their switches and have objected to doing so. BellSouth cannot force CLECs who are non-parties to reveal information that they choose not to reveal, absent some order of the Authority.

In the absence of the ability to require the disclosure of the information, BellSouth has investigated this matter in several ways. BellSouth has (1) referred to the LERG's reference to the number of switches in Nashville, (2) issued discovery requests seeking both information about CLEC's own switching capacity and their attempts to obtain (or even inquire about) switching from other CLECs, and (3) BellSouth has referred to the publicly disseminated advertisements by CLECs (such as the websites referenced during the hearing).

BellSouth provides the foregoing explanation in order to supply some context to the request for information. Importantly, DeltaCom (and the CLECs petitioning for relief in the local switching exemption docket) is urging that it has no option to obtain wholesale local switching in Nashville, other than BellSouth. BellSouth's purpose in questioning DeltaCom regarding CLEC web information was to illustrate that, while DeltaCom asserts that no wholesale options exist, the fact is that DeltaCom hasn't investigated to see whether that is the case. BellSouth does not believe it bears the burden to disprove DeltaCom's assertion. Rather, DeltaCom – the party seeking to avoid the use of the applicable market rate in view of the switching exemption – bears the burden of proving its assertion that no alternative wholesale option (or self-provisioning option) exists. Nonetheless, BellSouth is happy to marshal whatever information it can to rebut DeltaCom's assertion.

A copy of this letter is being provided to counsel of record.

Very truly yours,



Guy M. Hicks

## CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2003, a copy of the foregoing document was served on the parties of record, via the method indicated:

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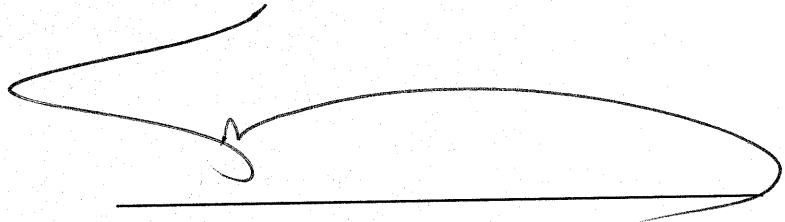
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